

Before the  
Federal Communications Commission  
Washington, D.C. 20554

MM Docket No. 92-246✓

In the Matter of

Amendment of Section 73.606(b),  
Table of Allotments,  
TV Broadcast Stations.  
(Ridgecrest, California)

RM-8091

### NOTICE OF PROPOSED RULE MAKING

Adopted: October 5, 1992; Released: November 5, 1992

Comment Date: December 28, 1992

Reply Comment Date: January 12, 1993

By the Chief, Allocations Branch:

1. The Commission has before it a petition for rule making filed by Valley Public Television, Inc. ("petitioner"), licensee of educational television Station KVPT, Channel \*18, Fresno, California, requesting the substitution of Channel \*41 for Channel \*25 at Ridgecrest, which is reserved for noncommercial educational use, or alternatively, the placement of a site restriction on Channel \*25 at Ridgecrest to accommodate petitioner's application site for a new noncommercial education television station on Channel \*39 at Bakersfield (File No. BPET-900904KF).<sup>1</sup>

2. Valley notes that the facility it is proposing in its Bakersfield application is short-spaced to the reference point coordinates of Channel \*25 at Ridgecrest, an isolated community located in the desert area of eastern California.

<sup>1</sup> Valley's petition for rule making was initially dismissed by letter on the grounds that the Ridgecrest channel substitution had been proposed in the context of MM Docket 85-390. While the proposed substitution at Ridgecrest was not adopted, the proceeding remained pending due to the filing of an application for review. See Letter from Chief, Allocations Branch, to counsel for Valley (May 1, 1991). See also *Report and Order* in MM Docket No. 85-390, 2 FCC Rcd 5882 (1987). Valley filed a petition for reconsideration of the letter dismissal and again requested the initiation of a rule making proceeding. While Valley's petition was pending, the Commission resolved MM Docket 85-390. See *Memorandum Opinion and Order* (Ventura, California) FCC 92-401, released September 1, 1992. In light of the above, Valley's substitution request at Ridgecrest can now be entertained. We will dismiss Valley's petition for reconsideration as moot at the termination of this proceeding.

<sup>2</sup> See *Advanced Television Systems and Their Impact on the Existing Television Service* in MM Docket 87-268, 52 Fed. Reg. 28346, published July 29, 1987.

<sup>3</sup> The use of Channel \*41 at Ridgecrest would be short-spaced to a land mobile sharing proposal for Channel 42 at Los Angeles. See *Amendment of the Rules Concerning Further Sharing of the UHF Television Band by Private Land Mobile Radio Services* (Notice of Proposed Rule Making) in Docket 85-172, 50

Valley contends that the allotment of Channel \*41 in lieu of Channel \*25 to Ridgecrest would eliminate the short-spacing. Valley further contends that the allotment of Channel \*41 to Ridgecrest will maximize the efficient use of Channel \*39 in Bakersfield by permitting operation of the channel from Valley's preferred site, releasing Channel \*25 for use in another community and permitting the retention of an educational television channel allotment at Ridgecrest. Valley argues that Channel \*25 at Ridgecrest cannot currently be used because of the freeze instituted in light of the advanced television proceeding.<sup>2</sup> Valley points out that there has been no interest shown in Channel \*25 since its allotment 25 years ago. Valley further states that the allotment of Channel \*41 to Ridgecrest poses no technical problems and would have no adverse effect on any other allotments or operating stations. Alternatively, Valley maintains that Channel \*25 could be retained at Ridgecrest with a site restriction that would clear Valley's application.

3. We believe the public interest would be served by seeking comments on the substitution of Channel \*41 for Channel \*25 at Ridgecrest, or alternatively, the placement of a site restriction on Channel \*25, to accommodate Valley's application site for Channel \*39 at Bakersfield.<sup>3</sup>

4. Channel \*41 can be allotted to Ridgecrest in compliance with the Commission's minimum distance separation requirements with a site restriction of 0.5 kilometers (0.3 miles) southwest of the community.<sup>4</sup> Alternatively, Channel \*25 can be site restricted to accommodate Channel \*39 at Bakersfield with a site restriction of 10.6 kilometers (6.6 miles) east of the community.<sup>5</sup>

5. Accordingly, we seek comments on the proposed amendment of the Television Table of Allotments, Section 73.606(b) of the Commission's Rules, for the community listed below, to read as follows:

		Channel No.	
City	Present		Proposed
Ridgecrest, California	*25		*41

Fed. Reg. 25587 (June 20, 1985). That proceeding does not specifically address the question of new television allotment proposals that conflict with proposed land mobile channels. However, with respect to applications for new, and modifications of, full service television stations, the item states, "We will protect full-service television stations on the basis of existing facilities, i.e., those for which a license or a construction permit was issued before the date this Notice is adopted. If an application for a new station is inconsistent with one of the proposed land mobile allocations, we will determine the degree of protection, if any, to be afforded the proposed television facility on a case-by-case basis in this rule making. New service resulting from the approval of applications received after adoption of the Notice in this proceeding, whether for new stations or authority to modify the facilities of existing stations, must accept such interference as may result from the operation if land mobile facilities permitted under the rules adopted in this proceeding." Consequently, if the substitution of Channel \*41 for Channel \*25 at Ridgecrest is made any application will be subject to the above considerations.

<sup>4</sup> The coordinates for Channel \*41 at Ridgecrest are North Latitude 35-37-22 and West Longitude 117-40-29.

<sup>5</sup> The coordinates for Channel \*25 are: North Latitude 35-38-58; West Longitude 117-33-24.

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **December 28, 1992**, and reply comments on or before **January 12, 1993**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Lonna M. Thompson, Esq.  
 Richard Hildreth, Esq.  
 Fletcher, Heald & Hildreth  
 1225 Connecticut Avenue, N.W., Suite 400  
 Washington, D.C. 20036-2679

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the Television Table of Allotments, Section 73.606(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b) and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Arthur D. Scrutchins, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

#### FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger  
 Chief, Allocations Branch  
 Policy and Rules Division  
 Mass Media Bureau

#### APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the TV Table of Allotments, Section 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.